IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 679 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SABIRKHAN @ ACHCHHEKHAN KAMARALIKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 679 of 2003

MR NM KAPADIA for Petitioner No. 1-2

MR VM PANCHOLI, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/07/2003

ORAL JUDGEMENT

This is a petition filed by the petitioner above named under Article 226 and 227 of the Constitution of India, read with Section 407 and 408 of the Code of

Criminal Procedure, 1973 for appropriate writ, order or direction, for quashing and setting aside the impugned order dated 27/06/03 passed by the learned Principal City Sessions Judge, Ahmedabad in Cr.M.A.No.802/2003 and for transferring Sessions Case No.234/2000 from the Court of the learned Addl. City & Sessions Judge to any other Court competent to try the said sessions case.

2. It appears that Sessions Case No.234/2000 is pending before the learned Addl. Sessions Judge, City Sessions Court at Ahmedabad, at the stage of trial. It also appears that the present petitioner had submitted an application, for transfer of the said matter to any other Addl. Sessions Judge, which came to be turned down by the learned Principal City Sessions Judge and even by this Court by order passed in S.Cr.A.No.321/2003 on 16/04/03.

3. At that time, another application of the petitioner for transfer of the said sessions case was pending before the learned Principal City Sessions Judge at Ahmedabad which came to the dismissed by the said Court on 27/06/03 in Cr.M.A.No.802/2003.

4. Feeling aggrieved by the said order of the learned Principal City Sessions Judge dated 27/06/03 in Cr.M.A.No.802/2003, the petitioner, original accused, has preferred this petition before this Court.

5. The learned advocate for the petitioner has drawn my attention to the contentions raised before the learned Principal City Sessions Judge in Cr.M.A.No.802/2003. At page 78, in para 10, it has been contended that on 31/03/03, the matter was taken on hand before the trial court; that at that time the accused persons were present and some witnesses were also present; that at about 1.30PM the matter was called out and the accused persons remained present and attended the call; that at that time the trial court inquired from them about the application of the accused persons pending before this Court for the transfer of the case and one of the accused persons told the Court that the petition was filed before the High Court on 27/03/03; that the learned Judge was not satisfied with the said information and required the concerned accused person to supply the number of the application of the accused persons before this Court; that the said information was not on hand with the accused persons and therefore, the learned Judge required the accused persons to obtain the same from the advocate and the matter was postponed to 2.45PM; that thereafter, the accused person inquired from the advocate and a

purshish containing the required information was prepared and presented to the trial court at 2.45PM; that at that time the learned Judge after reading the purshish, initially adjourned the matter to 27/04/03; that, thereafter the learned Judge again considered the purshish and inquired from Mr.G G Shaikh, a colleague advocate of Mr.M M Shaikh appearing for the original complainant with the prosecution, if he was going to remain present before the High Court for opposing the said application. Mr.G G Shaikh, in reply, said that the complainant was not present and therefore, he was not aware about the said position; that, thereafter, the learned Judge told that she was granting adjournment to 07/04/03 and in the meantime, he may inquire from the original complainant. On the said say, the learned Judge adjourned the matter to 07/04/03; that, thereafter, the learned Judge also observed that she was not concerned with the stay order of that Court, but she was concerned with the stay order of this Court.

7. The present applicant being the original accused before the trial court feels offended and aggrieved by the last words said to have been used by the learned Judge. It is, therefore, contended that on account of the aforesaid words said to have been used by the learned Judge, the present accused person apprehends that the petitioner will not get justice at the hands of the learned Judge, incharge of the aforesaid Sessions Case and therefore, the petitioner applied for transfer of case before the learned Principal Judge of City Sessions Court who dismissed the said application on 27/07/03. Hence, this application on the same set of facts.

8. On hearing the learned advocate for the petitioner, it is clear that so far the earlier order of this Court is concerned, it was dated 16/04/03 in Cr.M.A.No.321/2003. Ordinarily, the contentions present and available to the petitioners on or before 16/04/03 have to be placed before the Court concerned for consideration and all such contentions and considerations as on that date, would not be permitted to be raised for the second time in a second petition.

9. However, it has been contended by the learned advocate for the petitioner that on 16/04/03 the aforesaid petition of the petitioner was pending before the learned Principal City Sessions Judge and therefore, the contentions available to the petitioner as aforesaid were not raised before this Court.

10. However, even if we look at the said contentions,

it is not understandable as to how the petitioner felt offended by the aforesaid conduct of the learned Judge when adjournment was granted as soon as it was shown to her that a petition was filed for transfer of the matter, before this Court.

11. It is true that at initial stage the matter was adjourned to 27/04/03 and subsequently, it was said that the matter was being adjourned to 07/04/03. This does not give a cause of action to the petitioner for filing a transfer application.

12. Another contention raised in the petition is that the learned Judge inquired from the complainant's advocate as to whether he was going to oppose the transfer application. This is a formal discussion in open Court, which would not go to show that the learned Judge had expressed her opinion this way or that way.

13. Another contention is that the learned Judge also told the complainant's advocate to inquire as to whether or not the complainant desired to oppose the application of transfer before the High Court. This has nothing to do with the expression of opinion on the merits of the case this way or that way. One more contention is that the learned Judge observed that she was not concerned with the stay order of that Court, but was concerned with the stay order of the High Court. Now, there was no matter pending before the learned Principal City Sessions Judge and therefore, there was no question of any stay order of that Court. The learned Judge has not observed anything regarding the order of this Court. Therefore, even on the consideration to the averments made in para 10 and 11 of the application before the learned Principal City Sessions Judge, it is clear that the petitioner had no reason or ground to apprehended that he would not get a fair trial and justice at the hands of the learned trial Judge.

14. The learned advocate for the petitioner has relied upon the observations of the Hon'ble the Supreme Court in Para 19 and 20 of a decision rendered in M/s. Chetak Construction Ltd. V. Om Prakash and Others reported in AIR 1998 SC, 1855. The observations made therein have been considered by me for the purpose of dealing with the present petition. I have also considered a decision in State of Gujarat V. Ashish B. Gandhi reported in 1993(1) GLH, 268. Paras 19 and 20 of AIR 1998 SC 1855 (supra) are reproduced for ready reference as follows;

Para 19 : Indeed, no lawyer or litigant can be permitted to brow beat the Court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and Rule of Law would receive a set back. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot, be allowed to "terrorize" or "intimidate" Judges with a view of "secure" orders which they want. This is basic and fundamental and no civilized system of administration of justice can permit it. We certainly, cannot approve of any attempt on the part of any litigant to go "forum shopping". A litigant cannot be permitted "choice" of the "forum" and every attempt at "forum shopping" must be crushed with a heavy hand.

Para 20 : At the same time, it is of utmost importance to remember that Judges must act as impartial referees and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the fairness and impartiality of the Judges at all levels. It is the principle of highest importance, for the proper administration of justice, that judicial powers must be exercised impartially and within the bounds of law. Public confidence in the judiciary rests on legitimacy of judicial process. Sources of legitimate are in the impersonal application by the Judge of recognized objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudice. Judges must always ensure that they do not allow the credibility of the institution to be eroded. We must always remember that justice must not only be done but it must also be seen to be done.

15. Anyway, these are the principles which have to be kept in mind. At the same time, the present petition is required to be disposed of, on merits of facts and circumstances of the case on hand. Here, we find that the aforesaid contentions raised in the petition do not

show that the petitioner has a reasonable apprehension in his mind that he would not get a fair trial and justice at the hands of the learned trial Judge, who is incharge of the aforesaid sessions case. Therefore, no case is made out for the transfer of the case and in absence of any case being made out, there is no reason for the transfer of the said sessions case. Consequently, the petition is without any merit and it deserves to be dismissed. The petition is accordingly dismissed at admission stage.

(D. P. Buch, J.)

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